IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE JURISIDICTION

**CRIMINAL APPEAL NO. 347 OF 2000**

Jagannath Ramchandra Sakpal
Convict Prisoner no. C-11281
Yerwada Central Prison,
Pune-411 006. .. **Appellant/ (Orig. accused)**

Versus.

The State of Maharashtra .. **Respondent/ (Orig. Complt)**

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Mrs. Latika Khemani, Advocate for the Appellant/Accused.
Mrs. U.V. Kejvival, A.P.P. for the Respondent/State.

**CORAM: V.G. PALSHIKAR, J.**

**ANOOP V. MOHTA, J.**

**DATE : 29TH OCTOBER, 2004.**

**JUDGEMENT :** *(Per Anoop V. Mohta, J).*

1. The Appellant was tried and convicted under Section 302 of Indian Penal Code for the murder of his wife Sanjana and has been sentenced to Rigorous Imprisonment for life and ordered to pay a fine of Rs.10,000/-, in default thereof, to undergo Rigorous Imprisonment for one year. Therefore, this Appeal against the order of conviction.

2. Heard the learned Advocate for the Appellant and the learned A.P.P. for the State. We have been taken through the testimonies of all the witnesses and the records of the case.

3. The prosecutions case has been supported by PW-4 Jagannath and PW-5 Tippana being the eye-witness to the incident dated 20th February, 1998. On that day at about 6.30 p.m. the appellant while quarrelling with the deceased in his house, suddenly assaulted her with a wooden stick, almost on all parts of the body and especially on the head and torso. PW-4 Jagannath could see this incident as the door of the house of the accused was open. Alongwith the other, this witness had tried to prevent the Appellant from assaulting his wife. PW-5 Tippanna, also tried to prevent the assault. However, in that process Tippana got hit by the wooden stick of the appellant. Therefore, they all left the house and the door was closed by the appellant. The deceased was taken to Bhagwati Hospital. PW-4 identified the wooden stick which was owned by Jagannath. The said wooden stick was brought by the appellant from the house of PW-4 during the quarrel. There was no enmity between PW-4 and the Appellant.

4. The prosecutions' case has been further proved and corroborated by PW-6 Jayesh, a minor, the son of the accused. PW-6 has deposed that his father murdered his mother. The weapon of assault was a wooden stick. She was assaulted on the back and on the head. Jayesh, five years old son, has also stated that quarrels between his parents were frequent. He also deposed that the said wooden stick was brought by the appellant from the neighbour's house. His father was angry at the time of assault. One neighbour was assaulted when he was trying to prevent the assault.

5. This story of prosecution has been further proved by PW-7 Dr Vithal Hasha Vihurkar, who had examined the dead body of the deceased on 21st February, 1998 and Post-Mortem Report (Exhibit-14) was accordingly prepared. PW-7 stated that; the injuries noted were sufficient in normal circumstances to cause death, those injuries were likely to be caused by blunt and hard substance, those injuries were possible by a wooden stick.

6. PW-1 Bhimrao has deposed that they received the message from EPR constable, that injured Sanjana was

brought to the Hospital and she died before the admission. The Inquest Panchanama was recorded of the dead body of the deceased. There were injuries all over her body. The clothes of the deceased were taken and seized under the panchanama (Exhibit-5). The Appellant statement was recorded, including that of the neighbours. The body was sent for Post-Mortem. On the next day at about 7 a.m., the spot panchanama was recorded. Various blood stained articles and blood stains on the floor and on the wall of the house, including broken green colour bangles were seized. A broken bamboo stick and Koyta having blood stains thereon was also seized. PW-1 Bhimrao has corroborated the Post-Mortem Report and the complaint dated 22nd February, 1998 which was registered as C.R. (Exhibit-7). The accused was arrested accordingly.

7. PW-2 Mrs. Usha was the panch witness to the injuries, and dead body and clothes of the deceased. PW-3 Bhimrao Jangale has corroborated the spot panchanama.

8. The statement of the Appellant under Section 313 of Criminal Procedure Code is also an additional factor

which supports the prosecution's case where he has stated that he was not present at the relevant time at the place. He saw the deceased lying near the cycle in the kitchen. Therefore, he had called his son who was unable to explain the condition of the deceased. Thereafter, they took the deceased to Bhagwati Hospital. He further stated that his wife was a victim of an attempted rape by these people and therefore all witnesses were deposing against him. We have noted that there is no defence witness or any material placed on the record to justify his case as stated. He infact later on denied everything.

9. After considering the prosecutions case as well as the testimonies of all the witnesses on the record we are of the view that the impugned Judgment and Order passed by the Additional Sessions Judge, Greater Mumbai is correct. There is no perversity in the order and or in the reasoning. The prosecution has proved its case. The conviction imposed on the Appellant is within the framework of law and therefore there is no case made out to interfere with the order of conviction.

10. According to us, even if there are some lacunas

and or some omissions or discrepancies in the evidence of the witnesses, that itself cannot be the reason to disbelieve the prosecution's case. The prosecution has proved beyond reasonable doubt that the Appellant has assaulted and committed murder on his wife. The testimonies of witnesses including PW-1, 4, 5, 6 and 9 cannot be discarded. Those witnesses cannot be said to be tutored witnesses. Considering the nature and number of injuries, it cannot be said that the Appellant had assaulted his wife on account of grave and sudden provocation and or at the spur of the moment. The homicidal death of the deceased in question nowhere supports the case of the defence of suicidal or accidental death.

11. The Appellant with full knowledge and intention, had assaulted his wife, which resulted in her death. There are no mitigating circumstances to reduce the punishment as awarded.

12. For the reasons noted above, the impugned Judgment and Order is confirmed. The Appeal is dismissed.

sd/-

**(V.G. PALSHIKAR, J)**

sd/-

**(ANOOP V. MOHTA, J)**